IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

Bail Appl..No. 4844 of 2007()

[CRIME NO.743/2007 OF CENTRAL POLICE STATION, ERNAKULAM]

PETITIONERS/ACCUSED

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1. NIZAR.M.A., AGED 40 YEARS,
   SATHAR MANSIL MOOVATTUPUZHA, NOW RESIDING AT
   KUMARANALLOOR KOTTAYAM.

2. S.K.NITHEESH,
   SHASTHAMKUNNEL, PERAMBALLOOR P.O.,
   MUVATTUPUZHA.

BY ADV. SRI.V.S.AFSAL KHAN

RESPONDENTS: COMPLAINANT

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1. S.I.OF POLICE,
   CENTRAL POLICE STATION,
   ERNAKULAM.

2. STATE OF KERALA REPRESENTED BY THE
   DIRECTOR GENERAL OF PROSECUTION,
   HIGH COURT OF KERALA AND ANOTHER.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4844 of 2007

Dated this the 10th day of August 2007

O R D E R

Application for anticipatory bail. The petitioners face allegations under Sections 406 and 420 I.P.C. They had availed a loan from the financier. The financier complaints that the liability has not been discharged and the vehicle has been used by the petitioners the way they liked contrary to the terms of the agreement. This in short is the allegation. Crime has been registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. Every breach of promise cannot be equated to an offence of cheating under the criminal law. There is no element of entrustment in this case as to attract breach of trust or misappropriation. In these circumstances, the petitioners are entitled for anticipatory bail, submits the learned counsel for the petitioners. The criminal adjudicatory process has unnecessarily and vexatiously been misused by the financier to vex and harass the petitioners and compel them to yield to the terms initiated returns by the financier, submits the learned counsel for the petitioners.

3. The learned Public Prosecutor opposes the application. I shall carefully avoid any detailed discussion on merits about the acceptability of the allegations and the credibility of the data collected. Suffice it to say that on an anxious evaluation of all the relevant inputs, I find force in the contention of the learned counsel for the petitioners.

3. In the result, this petition is allowed. Following directions are issued under Section 438 Cr.P.C in favour of the petitioners.

i) Petitioners shall surrender before the learned Magistrate having jurisdiction at 11 a.m on 17/08/2007.

ii) They shall be released on regular bail on condition that they execute bonds for Rs.25,000/-(Rupees twenty five thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

iii) The petitioners shall make themselves available for interrogation before the investigating officer between 10 a.m and 3 p.m on 18/08/2007 and 20/08/2007 and thereafter on all Mondays and Fridays between 10 a.m and 12 noon for a period of one month. Subsequently the petitioners shall so appear as

and when directed by the investigating officer in writing to do so.

(iv) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law, as if these directions were not issued at all.

(v) If they were arrested prior to 17/08/2007, they shall be released from custody on their executing a bond for Rs.25,000/- (Rupees twenty five thousand only) without any sureties, undertaking to appear before the learned Magistrate on 17/08/2007.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007